



August 21, 2002

Ms. Hadassah Schloss
Texas Building and Procurement Commission
P.O. Box 13047
Austin, Texas 78711

OR2002-4639

Dear Ms. Schloss:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167526.

The Texas Building and Procurement Commission (the "commission") received two requests for the following information:

Request No. 1:

1. All procurement card transactions for [a named individual] during Fiscal Years 1999, 2000 & 2001. Specifically, . . . the org. codes the charges were for and copies of the receipts [sic] for the transactions. . . . also . . . the log sheets created by the divisions and [the named individual] that should have been included with each monthly report. . . .
2. . . . ALL addendums created by IPS for Fiscal Years 2001 & 2002 for any IFB or RFP.
3. . . . [A] current copy of [the commission]'s letterhead; and the last version prior to the current.
4. . . . All paperwork having to do with [the requestor's] termination on 05/13/02, including the PAF.

Request No. 2:

[A]ll addendums associated with RFP's 303-2-0639 & 303-2-0710.

The requestor subsequently withdrew her request for item 2 of Request No. 1, and modified the remainder of her request to exclude account numbers. You state that information responsive to item 4 of Request No. 1 has been released to the requestor, with the exception of the PAF, which does not exist. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984). You claim that a portion of the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As an initial matter, subsections 552.301(a) and (b) of the Public Information Act provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Further, section 552.301(e) provides that a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. As you acknowledge, this office did not receive the request for a decision within the ten business day period mandated by section 552.301(a), and did not receive the above-listed information within the fifteen business day period mandated by section 552.301(e).

Because the commission failed to comply with the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. This office has long held that a compelling reason to withhold information exists, sufficient to overcome the section 552.302 presumption of openness, where the information at issue is made confidential by another source of law or affects third party interests. *See* Open Records Decision Nos. 26 (1974), 150 (1977). You contend that section 552.103 of the Government Code makes this information confidential. However, section 552.103 does not provide a compelling reason for withholding the requested information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived). Thus, the submitted information may not be withheld from public disclosure under section 552.103.

You also contend that the submitted information is excepted under section 552.108 of the Government Code. We observe that the need of another governmental body to withhold requested information may provide a compelling reason for nondisclosure under section 552.108. Open Records Decision No. 586 (1991) (when a governmental body fails to timely seek an attorney general decision under the Public Information Act, the need of another governmental body may provide a compelling reason for withholding the requested information). However, while you state that the commission has turned information over to the State Auditor's Office and the Department of Public Safety in connection with a criminal investigation, you have failed to provide this office with a representation from either agency that release of the requested information would interfere with the detection, investigation or prosecution of crime. Thus, you have not demonstrated a compelling reason for withholding the requested information under section 552.108. *See* Open Records Decision Nos. 586 (1991), 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived). Therefore, the information at issue may not be withheld from public disclosure under section 552.108.

We note that the submitted information contains e-mail addresses obtained from the public. Section 552.137 of the Government Code makes certain e-mail addresses confidential.¹ Section 552.137 provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

¹House Bill 2589 also makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The commission must, therefore, withhold e-mail addresses of members of the public under section 552.137. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 167526

Enc. Submitted documents

c: Ms. Monica Mackey
3825 Mocha Trail
Austin, Texas 78728
(w/o enclosures)